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108TH CONGRESS
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[Report No. 108–36]

To implement effective measures to stop trade in conflict diamonds, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 1, 2003

Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. DEWINE, Mr. DURBIN, Mr. GREGG, Mr. BINGAMAN, Mr. FEINGOLD, Ms. SNOWE, Mr. ROCKEFELLER, Mr. SANTORUM, Mr. LEAHY, Mr. KERRY, Mr. LUGAR, Mr. CORZINE, Mr. TALENT, Mr. LEVIN, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Finance

APRIL 9, 2003

Reported by Mr. GRASSLEY, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To implement effective measures to stop trade in conflict
diamonds, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Clean Diamond Trade
3 Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) Funds derived from the sale of rough dia-
7 monds are being used by rebels and state actors to
8 finance military activities, overthrow legitimate gov-
9 ernments, subvert international efforts to promote
10 peace and stability, and commit horrifying atrocities
11 against unarmed civilians. During the past decade,
12 more than 6,500,000 people from Sierra Leone, An-
13 gola, and the Democratic Republic of the Congo
14 have been driven from their homes by wars waged
15 in large part for control of diamond mining areas.
16 A million of these are refugees eking out a miserable
17 existence in neighboring countries, and tens of thou-
18 sands have fled to the United States. Approximately
19 3,700,000 people have died during these wars.

20 (2) The countries caught in this fighting are
21 home to nearly 70,000,000 people whose societies
22 have been torn apart not only by fighting but also
23 by terrible human rights violations.

24 (3) Human rights and humanitarian advocates,
25 the diamond trade as represented by the World Dia-
26 mond Council, and the United States Government

1 have been working to block the trade in conflict dia-
2 monds. Their efforts have helped to build a con-
3 sensus that action is urgently needed to end the
4 trade in conflict diamonds.

5 (4) The United Nations Security Council has
6 acted at various times under chapter VII of the
7 Charter of the United Nations to address threats to
8 international peace and security posed by conflicts
9 linked to diamonds. Through these actions, it has
10 prohibited all states from exporting weapons to cer-
11 tain countries affected by such conflicts. It has fur-
12 ther required all states to prohibit the direct and in-
13 direct import of rough diamonds from Sierra Leone
14 unless the diamonds are controlled under specified
15 certificate of origin regimes and to prohibit abso-
16 lutely the direct and indirect import of rough dia-
17 monds from Liberia.

18 (5) In response, the United States implemented
19 sanctions restricting the importation of rough dia-
20 monds from Sierra Leone to those diamonds accom-
21 panied by specified certificates of origin and fully
22 prohibiting the importation of rough diamonds from
23 Liberia. The United States is now taking further ac-
24 tion against trade in conflict diamonds.

1 (6) Without effective action to eliminate trade
2 in conflict diamonds, the trade in legitimate dia-
3 monds faces the threat of a consumer backlash that
4 could damage the economies of countries not in-
5 volved in the trade in conflict diamonds and penalize
6 members of the legitimate trade and the people they
7 employ. To prevent that, South Africa and more
8 than 30 other countries are involved in working,
9 through the “Kimberley Process”, toward devising a
10 solution to this problem. As the consumer of a ma-
11 jority of the world’s supply of diamonds, the United
12 States has an obligation to help sever the link be-
13 tween diamonds and conflict and press for imple-
14 mentation of an effective solution.

15 (7) Failure to curtail the trade in conflict dia-
16 monds or to differentiate between the trade in con-
17 flict diamonds and the trade in legitimate diamonds
18 could have a severe negative impact on the legiti-
19 mate diamond trade in countries such as Botswana,
20 Namibia, South Africa, and Tanzania.

21 (8) Initiatives of the United States seek to re-
22 solve the regional conflicts in sub-Saharan Africa
23 which facilitate the trade in conflict diamonds.

24 (9) The Interlaken Declaration on the Kim-
25 berley Process Certification Scheme for Rough Dia-

1 monds of November 5, 2002, states that Partici-
2 pants will ensure that measures taken to implement
3 the Kimberley Process Certification Scheme for
4 Rough Diamonds will be consistent with inter-
5 national trade rules.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) CONTROLLED THROUGH THE KIMBERLEY
9 PROCESS CERTIFICATION SCHEME.—An importation
10 or exportation of rough diamonds is “controlled
11 through the Kimberley Process Certification
12 Scheme” if it is an importation from the territory of
13 a Participant or exportation to the territory of a
14 Participant of rough diamonds that is—

15 (A) carried out in accordance with the
16 Kimberley Process Certification Scheme, as set
17 forth in regulations promulgated by the Presi-
18 dent; or

19 (B) controlled under a system determined
20 by the President to meet substantially the
21 standards, practices, and procedures of the
22 Kimberley Process Certification Scheme.

23 (2) EXPORTING AUTHORITY.—The term “ex-
24 porting authority” means 1 or more entities des-
25 ignated by a Participant from whose territory a

1 shipment of rough diamonds is being exported as
 2 having the authority to validate the Kimberley Proc-
 3 ess Certificate.

4 (3) IMPORTING AUTHORITY.—The term “im-
 5 porting authority” means 1 or more entities des-
 6 ignated by a Participant into whose territory a ship-
 7 ment of rough diamonds is imported as having the
 8 authority to enforce the laws and regulations of the
 9 Participant regulating imports, including the
 10 verification of the Kimberley Process Certificate ac-
 11 companying the shipment.

12 (4) KIMBERLEY PROCESS CERTIFICATE.—The
 13 term “Kimberley Process Certificate” means a for-
 14 gery resistant document of a Participant that dem-
 15 onstrates that an importation or exportation of
 16 rough diamonds has been controlled through the
 17 Kimberley Process Certification Scheme and con-
 18 tains the minimum elements set forth in Annex I of
 19 the Kimberley Process Certification Scheme.

20 (5) KIMBERLEY PROCESS CERTIFICATION
 21 SCHEME.—The term “Kimberley Process Certifi-
 22 cation Scheme” means those standards, practices,
 23 and procedures of the international certification
 24 scheme for rough diamonds presented in the docu-
 25 ment entitled “Kimberley Process Certification

1 Scheme” referred to in the Interlaken Declaration
 2 on the Kimberley Process Certification Scheme for
 3 Rough Diamonds of November 5, 2002.

4 (6) PARTICIPANT.—The term “Participant”
 5 means a state, customs territory, or regional eco-
 6 nomic integration organization identified by the Sec-
 7 retary of State.

8 (7) PERSON.—The term “person” means an in-
 9 dividual or entity.

10 (8) ROUGH DIAMOND.—The term “rough dia-
 11 mond” means any diamond that is unworked or sim-
 12 ply sawn, cleaved, or bruted and classifiable under
 13 subheading 7102.10, 7102.21, or 7102.31 of the
 14 Harmonized Tariff Schedule of the United States.

15 (9) UNITED STATES.—The term “United
 16 States”, when used in the geographic sense, means
 17 the several States, the District of Columbia, and any
 18 commonwealth, territory, or possession of the United
 19 States.

20 (10) UNITED STATES PERSON.—The term
 21 “United States person” means—

22 (A) any United States citizen or any alien
 23 admitted for permanent residence into the
 24 United States;

1 (B) any entity organized under the laws of
2 the United States or any jurisdiction within the
3 United States (including its foreign branches);
4 and

5 (C) any person in the United States.

6 **SEC. 4. MEASURES FOR THE IMPORTATION AND EXPOR-**
7 **TATION OF ROUGH DIAMONDS.**

8 (a) PROHIBITION.—The President shall prohibit the
9 importation into, or exportation from, the United States
10 of any rough diamond, from whatever source, that has not
11 been controlled through the Kimberley Process Certifi-
12 cation Scheme.

13 (b) WAIVER.—The President may waive the require-
14 ments set forth in subsection (a) with respect to a par-
15 ticular country for periods of not more than 1 year each,
16 if, with respect to each such waiver—

17 (1) the President determines and reports to
18 Congress that such country is taking effective steps
19 to implement the Kimberley Process Certification
20 Scheme; or

21 (2) the President determines that the waiver is
22 in the national interests of the United States, and
23 reports such determination to Congress, together
24 with the reasons therefor.

1 **SEC. 5. REGULATORY AND OTHER AUTHORITY.**

2 (a) IN GENERAL.—The President is authorized to
3 and shall as necessary issue such proclamations, regula-
4 tions, licenses, and orders, and conduct such investiga-
5 tions, as may be necessary to carry out this Act.

6 (b) RECORDKEEPING.—Any United States person
7 seeking to export from or import into the United States
8 any rough diamonds shall keep a full record of, in the form
9 of reports or otherwise, complete information relating to
10 any act or transaction to which any prohibition imposed
11 under section 4(a) applies. The President may require
12 such person to furnish such information under oath, in-
13 cluding the production of books of account, records, con-
14 tracts, letters, memoranda, or other papers, in the custody
15 or control of such person.

16 (c) OVERSIGHT.—The President shall require the ap-
17 propriate Government agency to conduct annual reviews
18 of the standards, practices, and procedures of any entity
19 in the United States that issues Kimberley Process Certifi-
20 cates for the exportation from the United States of rough
21 diamonds to determine whether such standards, practices,
22 and procedures are in accordance with the Kimberley
23 Process Certification Scheme. The President shall trans-
24 mit to Congress a report on each annual review under this
25 subsection.

1 **SEC. 6. IMPORTING AND EXPORTING AUTHORITIES.**

2 (a) IN THE UNITED STATES.—For purposes of this
3 Act—

4 (1) the importing authority shall be the United
5 States Bureau of Customs and Border Protection or,
6 in the case of a territory or possession of the United
7 States with its own customs administration, analo-
8 gous officials; and

9 (2) the exporting authority shall be the Bureau
10 of the Census.

11 (b) OF OTHER COUNTRIES.—The Secretary of State
12 shall publish in the Federal Register a list of all Partici-
13 pants, and all exporting authorities and importing authori-
14 ties of Participants. The Secretary shall update the list
15 as necessary.

16 **SEC. 7. STATEMENT OF POLICY.**

17 Congress supports the policy that the President take
18 appropriate steps to promote and facilitate the adoption
19 by the international community of the Kimberley Process
20 Certification Scheme implemented under this Act.

21 **SEC. 8. ENFORCEMENT.**

22 (a) IN GENERAL.—In addition to the enforcement
23 provisions set forth in subsection (b)—

24 (1) a civil penalty of not to exceed \$10,000 may
25 be imposed on any person who violates, or attempts

1 to violate, any license, order, or regulation issued
2 under this Act; and

3 (2) whoever willfully violates, or willfully at-
4 tempts to violate, any license, order, or regulation
5 issued under this Act shall, upon conviction, be fined
6 not more than \$50,000, or, if a natural person, may
7 be imprisoned for not more than 10 years, or both;
8 and any officer, director, or agent of any corporation
9 who willfully participates in such violation may be
10 punished by a like fine, imprisonment, or both.

11 (b) IMPORT VIOLATIONS.—The civil and criminal
12 customs laws and penalties of the United States, including
13 seizure and forfeiture, that apply to merchandise imported
14 in violation of such laws shall apply with respect to rough
15 diamonds imported in violation of this Act.

16 **SEC. 9. TECHNICAL ASSISTANCE.**

17 The President may direct the appropriate agencies of
18 the United States Government to make available technical
19 assistance to countries seeking to implement the Kim-
20 berley Process Certification Scheme.

21 **SEC. 10. SENSE OF CONGRESS.**

22 (a) ONGOING PROCESS.—It is the sense of Congress
23 that the Kimberley Process Certification Scheme, officially
24 launched on January 1, 2003, is an ongoing process. The
25 President should work with Participants to strengthen the

1 Kimberley Process Certification Scheme through the adop-
2 tion of measures for the sharing of statistics on the pro-
3 duction of and trade in rough diamonds, and for moni-
4 toring the effectiveness of the Kimberley Process Certifi-
5 cation Scheme in stemming trade in diamonds the impor-
6 tation or exportation of which is not controlled through
7 the Kimberley Process Certification Scheme.

8 (b) STATISTICS AND REPORTING.—It is the sense of
9 Congress that under Annex III to the Kimberley Process
10 Certification Scheme, Participants recognized that reliable
11 and comparable data on the international trade in rough
12 diamonds are an essential tool for the effective implemen-
13 tation of the Kimberley Process Certification Scheme.
14 Therefore, the executive branch should continue to—

15 (1) keep and publish statistics on imports and
16 exports of rough diamonds under subheadings
17 7102.10.00, 7102.21, and 7102.31.00 of the Har-
18 monized Tariff Schedule of the United States;

19 (2) make these statistics available for analysis
20 by interested parties and by Participants; and

21 (3) take a leadership role in negotiating a
22 standardized methodology among Participants for
23 reporting statistics on imports and exports of rough
24 diamonds.

1 ~~(c) KIMBERLEY PROCESS IMPLEMENTATION COORDI-~~
 2 ~~NATING COMMITTEE.—It is the sense of Congress that the~~
 3 ~~President should establish a Kimberley Process Implemen-~~
 4 ~~tation Coordinating Committee to coordinate the imple-~~
 5 ~~mentation of this Act. The Committee should be composed~~
 6 ~~of the following individuals or their designee:~~

7 ~~(1) The Secretary of the Treasury and the Sec-~~
 8 ~~retary of State, who shall be co-chairpersons.~~

9 ~~(2) The Secretary of Commerce.~~

10 ~~(3) The United States Trade Representative.~~

11 ~~(4) The Secretary of Homeland Security.~~

12 ~~(5) A representative of any other agency the~~
 13 ~~President deems appropriate.~~

14 ***SEC. 11. KIMBERLEY PROCESS IMPLEMENTATION COORDI-***
 15 ***NATING COMMITTEE.***

16 ~~(a) ESTABLISHMENT.—The President shall establish a~~
 17 ~~Kimberley Process Implementation Coordinating Com-~~
 18 ~~mittee to coordinate the implementation of this Act.~~

19 ~~(b) MEMBERS.—The Kimberley Process Implementa-~~
 20 ~~tion Coordinating Committee shall be composed of the fol-~~
 21 ~~lowing individuals or their designees:~~

22 ~~(1) The Secretary of the Treasury and the Sec-~~
 23 ~~retary of State, who shall be co-chairpersons.~~

24 ~~(2) The Secretary of Commerce.~~

25 ~~(3) The United States Trade Representative.~~

1 (4) *The Secretary of Homeland Security.*

2 (5) *A representative of any other agency the*
3 *President deems appropriate.*

4 **SEC. ~~11~~ 12. REPORTS.**

5 (a) ANNUAL REPORTS.—Not later than 1 year after
6 the date of enactment of this Act and every 12 months
7 thereafter for such period as this Act is in effect, the
8 President shall transmit to Congress a report—

9 (1) describing actions taken by countries that
10 have exported rough diamonds to the United States
11 during the preceding 12-month period to control the
12 exportation of the diamonds through the Kimberley
13 Process Certification Scheme;

14 (2) describing whether there is statistical infor-
15 mation or other evidence that would indicate efforts
16 to circumvent the Kimberley Process Certification
17 Scheme, including cutting rough diamonds for the
18 purpose of circumventing the Kimberley Process
19 Certification Scheme; and

20 (3) identifying each country that, during the
21 preceding 12-month period, exported rough dia-
22 monds to the United States and was exporting rough
23 diamonds not controlled through the Kimberley
24 Process Certification Scheme, if the failure to do so
25 has significantly increased the likelihood that those

1 diamonds not so controlled are being imported into
2 the United States.

3 (b) SEMIANNUAL REPORTS.—For each country iden-
4 tified in subsection (a)(2), the President, during such pe-
5 riod as this Act is in effect, shall, every 6 months after
6 the initial report in which the country was identified,
7 transmit to Congress a report that explains what actions
8 have been taken by the United States or such country
9 since the previous report to ensure that diamonds the ex-
10 portation of which was not controlled through the Kim-
11 berley Process Certification Scheme are not being im-
12 ported from that country into the United States. The re-
13 quirement to issue a semiannual report with respect to a
14 country under this subsection shall remain in effect until
15 such time as the country is controlling the importation and
16 exportation of rough diamonds through the Kimberley
17 Process Certification Scheme.

18 **SEC. ~~12~~ 13. GAO REPORT.**

19 Not later than 24 months after the effective date of
20 this Act, the Comptroller General of the United States
21 shall transmit a report to Congress on the effectiveness
22 of the provisions of this Act in preventing the importation
23 or exportation of rough diamonds that is prohibited under
24 section 4. The Comptroller General shall include in the

1 report any recommendations on any modifications to this
2 Act that may be necessary.

3 **SEC. ~~13~~ 14. EFFECTIVE DATE.**

4 This Act shall take effect on the date on which the
5 President certifies to Congress that—

6 (1) an applicable waiver that has been granted
7 by the World Trade Organization is in effect; or

8 (2) an applicable decision in a resolution adopt-
9 ed by the United Nations Security Council pursuant
10 to Chapter VII of the Charter of the United Nations
11 is in effect.

12 This Act shall thereafter remain in effect during those pe-
13 riods in which, as certified by the President to Congress,
14 an applicable waiver or decision referred to in paragraph
15 (1) or (2) is in effect.

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